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99TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
99-517

HERBERT TICHAUER

APRIL 9, 1986.—Committed to the Committee of the Whole House and ordered to be printed

Mr. FRANK, from the Committe on the Judiciary, submitted the following

REPORT

[To accompany H.R. 1756]

The Committee on the Judiciary to whom was referred the bill (H.R. 1756), for the relief of Herbert Tichauer, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Line 3, delete "section 212(a)4 or section 212(a)9" and insert in lieu thereof "section 212(a)(9)".

PURPOSE OF THE BILL

The purpose of the bill, as amended, is to waiver the excluding provision of existing law relating to conviction of an offense involving moral turpitude. The bill has been amended to remove an exclusion bar for which the beneficiary has not been found ineligible.

STATEMENT OF FACTS

The beneficiary is the 78 year old sole surviving brother of a United States citizen whose family perished in World War II. He is a native of Germany and in 1934 had been detained in a concentration camp. The beneficiary later moved to England where he served as a volunteer in the British Army. During his residence in England, he learned his father and sister died in Auschwitz and that his mother and wife died. In 1943 he was convicted of indecency in England for which he was sentenced 15 months. In 1953 he returned to Berlin where he currently resides. His U.S. citizen brother filed a fifth preference petition which was approved December 23, 1981.

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The Committee notes the offense barring Mr. Tichauer's entry to the United States occurred 45 years ago and is an isolated incident preventing two brothers from enjoying the companionship of their late years. Because of the age, period of time which has elapsed since the offense, and the beneficiary's strong ties to his U.S. citizen brother, the Committee believes this case warrants favorable action.

On December 12, 1985, the Department of State submitted a report on this bill which reads as follows:

U.S. DEPARTMENT OF STATE,
Washington, DC, December 12, 1985.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives.

DEAR MR. CHAIRMAN: In reference to your request for a report concerning the case of Herbert Tichauer, beneficiary of H.R. 1756, 99th Congress, there is enclosed a memorandum of information concerning the beneficiary. This memorandum has been submitted by the United States Mission at Berlin, in whose consular jurisdiction the beneficiary resides.

The bill would provide for visa issuance and the beneficiary's admission for permanent residence notwithstanding his ineligibility under section 212(a)(4) of the Act and notwithstanding his ineligibility under section 212(a)(9) of the Act as an alien who has been convicted of crimes involving moral turpitude, if he is otherwise admissible under the provisions of the Immigration and Nationality Act. The relief granted is limited to a ground for exclusion known to the Department of State or the Department of Justice prior to enactment.

The U.S. Embassy at London has reported that the beneficiary resided in England from 1940 until 1947 and that he joined the British Army in 1940. However, he was discharged in 1941 for medical grounds. Police clearances have been requested. The Committee will be advised immediately, should the results of the investigation contain derogatory information.

The Department wishes to note that the beneficiary has never been found ineligible under the provisions of section 212(a)(4) of the Act, one of the grounds of ineligibility waived by this bill.

The Committee may wish to amend the language of the bill in light of the attached report, submitted subsequent to an interview conducted by the consular officer at the U.S. Mission in Berlin, which reveals no additional ground of ineligibility other than the misdemeanor conviction of 1943.

With best wishes,
Sincerely,

WILLIAM L. BALL III,
Assistant Secretary,
Legislative and Intergovernmental Affairs.

Enclosure.

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MEMORANDUM OF INFORMATION SUBMITTED BY THE U.S. MISSION AT BERLIN, FEDERAL REPUBLIC OF GERMANY, CONCERNING H.R. 1756, FOR THE RELIEF OF HERBERT TICHAUER

The beneficiary, Herbert Tichauer aka Herbert Israel Tichauer, was born on February 19, 1908 at Tarnowitz in Silesia, Poland (formerly Germany). He resides at Kuno Fischer Strasse, 1000 Berlin 19. On March 30, 1940, the beneficiary married Alicia Seidman Buyakovsky, who died on May 10, 1940. In June 1946 he married Theresa Nunes-Vaz, whom he later divorced in 1959. He had no children from either marriage, but did father an illegitimate child, Wolfgang Juglet, who was born November 5, 1929 in Leipzig, and died in Bucharest in 1943.

In 1934 the beneficiary was sent to a German concentration camp in Lichtenburg (near Halle-Torgau) for having illegitimately fathered the child of a Christian woman. He was amnestied in 1935 and in 1939 he travelled to London, England, where he joined the British Army in January 1940 after having served first as a volunteer. In March 1940 he married his first wife and six weeks later was assigned to serve in France. In January of 1940 the beneficiary lost his mother and on May 10, 1940, the day he arrived in France, he lost his wife.

The beneficiary's health deteriorated while in the British Army and due to his worsening eyesight and nervous condition, which he attributed to his experience in the concentration camp and the closely occurring deaths of his mother and wife, he was honorably discharged from the British Army after one year of service. He worked in Britain until 1947 and during his residence there he learned that this father and sister had died at the German concentration camp in Auschwitz. He returned to Germany where he lived in Berlin for one year. He then went to Paris for approximately three years and emigrated to Hafia, Israel in 1952 where he remained until June 1953. He left Israel for health reasons and resumed his residence in Berlin.

On October 14, 1943, the beneficiary was tried at the Oxfordshire Assizes, Oxford, England, and convicted of charges arising out of his sexual relations with a young man. He was charged with four counts of gross indecency for violation of the criminal law enforcement act of 1885, and five counts of buggery for violation of the "Offenses Against the Person Act, 1861". He confessed to three counts of gross indecency and was sentenced to fifteen months in common jail. In addition, he had to pay court costs not to exceed 100 pounds sterling. He served only ten months of the sentence, which was the standard practice at the time. The court records do not state whether any finding was made on the additional six alleged offenses with which he was charged. Mr. Tichauer claims that he was not treated fairly by the court in Oxford due to the strong anti-German sentiment in Britain in that period.

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In 1967 Mr. Tichauer applied for a nonimmigrant visa and was found ineligible under section 212(a)(9) of the Immigration and Nationality Act, because of his 1943 conviction in London for a crime of moral turpitude. However, Mr. Tichauer has travelled frequently to the United States between 1967 and the present time under the nonimmigrant visa waiver procedure of section 212(d)(3)(A) of the Act.

The beneficiary lives in Berlin alone. His only living relative is his brother Henry who became a naturalized citizen of the United States on September 6, 1945. Mr. Henry Tichauer filed a fifth preference immigrant visa petition on his brother's behalf on November 24, 1976 which was approved on December 1, 1976 and forwarded to the American Consulate General in Berlin. However, when he applied for an immigrant visa, Mr. Tichauer was found ineligible under section 212(a)(9) of the Act. Since the petition on his behalf was filed by his U.S. citizen brother, Mr. Tichauer was unable to qualify for the relief from ineligibility provided under section 212(h) of the Act. The benefits of that section are available only to those aliens whose parents, spouses and children are either United States citizens or lawful permanent resident aliens.

The post is aware of no additional grounds under the Act, aside from his 1943 conviction, which would render the beneficiary ineligible to receive an immigrant visa. Furthermore, local police checks on Mr. Tichauer have been negative.

The results of a medical examination on November 29, 1985 were normal. The beneficiary was hospitalized earlier in the month for removal of cataracts.

Enclosures.

THE CROWN COURT AT OXFORD,
April 20, 1982.

This is to certify that at the Oxfordshire Assizes at Oxford, on the 12th October, 1943, Herbert Israel Tichauer, was [upon his own confession] convicted upon indictment of three counts of gross indecency with Peter Henry James a male person, and was sentenced to 15 months imprisonment.

_____ _____,
Officer of the Crown Court.

The pertinent facts in this case are contained in a letter dated February 3, 1986, from the Commissioner of the Immigration and Naturalization Service to the Chairman of the Committee on the Judiciary. That letter and accompanying memorandum read as follows:

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U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
Washington, DC, February 3, 1986.

A27722146.

Hon. PETER W. RODINO, Jr.,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: In response to your request for a report relative to the bill (H.R. 1756) for the relief of Herbert Tichauer, there is attached a memorandum of information concerning the beneficiary.

The bill would waive the provisions of the Immigration and Nationality Act which exclude from admission into the United States aliens who are afflicted with psychopathic personality, sexual deviation, or a mental defect, or aliens who have been convicted of a crime involving moral turpitude and would hold that the beneficiary be issued a visa and be admitted to the United States for permanent residence if he is found to be otherwise admissible under the provisions of the Act. This exemption shall apply only to a ground of exclusion of which the Department of State or the Department of Justice has knowledge prior to the date of the enactment of this Act.

The beneficiary, a native of Germany, is chargeable to the fifth preference portion of the numerical limitation for immigrants.

Sincerely,

For the Commissioner
(S) Marvin T. Ely
(For Greg Loe, Director, Congressional and Public Affairs).

Enclosure.

MEMORANDUM OF INFORMATION FROM IMMIGRATION AND NATURALIZATION SERVICE FILES RE H.R. 1756

Information concerning this case was obtained from Henry Tichauer, the brother of the beneficiary and the interested party in this case.

The beneficiary, Herbert Tichauer, is a native and citizen of Germany, born April 23, 1908 in Berlin, Germany. He presently resides in Berlin, Germany. He indicated that he has been retired since 1958. Information on his income and assets is unavailable. His only close relative is his brother, Henry Tichauer, the interested party. The beneficiary claims numerous entries into the United States as a nonimmigrant visitor for pleasure between 1959 and 1982. A fifth preference visa petition was filed by his brother in his behalf and was approved on December 23, 1981. The consular officer denied him a visa based on statements made during an interview which brought him under the purview of section 212(a)(4) and (9) of the Immigration and Nationality Act. He was convicted for having committed a homosexual act in London, England in 1943.

The interested party, Henry Tichauer, is a native of Germany and a citizen of the United States. He was born in

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Germany on January 14, 1903 and was naturalized a United States citizen in 1946. He retired in 1972 and claims his present income is $1,000 per month and owns a condominium valued at $58,000.

Mr. Frank, the author of the bill, provided the following statement in support of this legislation.

HON. BARNEY FRANK

Mr. Chairman and members of the Subcommittee, I am grateful for this opportunity to testify on behalf of H.R. 1756, which I introduced in March, 1985. The bill would provide relief for Mr. Herbert Tichauer.

Let me briefly explain the circumstance of this case. Herbert Tichauer is an elderly man who resides in West Berlin. His entire family perished during the Second World War, with the exception of his brother Henry, who resides in Florida. For a period of time Herbert was detained in a Nazi concentration camp. In January 1940 he joined the British Army. He had not been able to take his mother out of Germany, and a few days after he joined the British Army she died. In March of 1940, he was married. His wife died in an operation on May 10th, as his company was being sent to serve in France. He was notified two weeks later. The combined shock of the deaths of his mother and wife led to a rapid deterioration in his health.

After a year of service, he was discharged on medical grounds with a recommendation of good character. The medical board informed him that he needed to be under medical care for two years and that he should rest as much as possible. He had no resources, however, and had to go to work, despite this medical advice.

Subsequently he learned that his father and sister had been killed at Auschwitz.

On or about February 1943, Mr. Tichauer stood trial and was convicted for committing a homosexual act. Mr. Tichauer could not be convicted for this offense in England today, because of reforms which were adopted in the early seventies. Furthermore, under the English statute, the Rehabilitation of Offenders Act, 1974, certain persons convicted of certain minor offenses (such as Mr. Tichauer's), who have not been convicted of any subsequent serious offense, are entitled to be treated as if he had not been prosecuted for, or convicted of, the offense he had committed.

Henry Tichauer, who has been a naturalized U.S. citizen since 1945, filed a petition for an immigrant visa on behalf of his brother in 1967. The petition was approved, but Herbert Tichauer was found to be ineligible under section 212(a)9 of the Immigration and Nationality Act, by the consular officer who interviewed him in Berlin. Mr. Tichauer had voluntarily disclosed his 1943 conviction, which U.S. officials would otherwise not have known about.

In December of 1981, Herbert Tichauer submitted new documentary information to the consulate regarding his

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1943 conviction. According to his brother's attorney, these records had been difficult to find, because of the time elapsed. The consulate raffirmed the original determination that Mr. Tichauer was ineligible under 212(a)9.

Herbert Tichauer seeks nothing more than to spend his remaining years with his sole surviving relative. My bill would waive his excludability as regards the 1943 conviction, which, as I have noted, is a conviction which under present English law should be treated as if it had never happened. It seems to me that Mr. Tichauer is excludable only on a technicality, and I would think that the humanitarian circumstances in this case merit passage of the bill.

Thank you for your consideration.

The following additional material was provided:

AUGUST 2, 1983.

Representative ROMANO L. MAZZOLI,
Chairman,
Longworth House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to you for consideration for a private bill introduced by Representative Barney Frank of Massachusetts. I desire the relief sought by the bill in order to resolve my immigration problems so that I may immigrate to the United States.

I served as a volunteer in the British Army during World War II. Prior to this, I was detained in a concentration camp during Hitler's regime. A few days after joining the British Army my mother died, which left me in a very depressed state. In March 1940 I got married. Six weeks after my marriage I was sent with my company to France. That same day, my wife died in an operation of which I learned two weeks later. Needless to say, I was deeply shocked after these two tragedies in my life, complicated by the fact that both my father and sister were exterminated at Auschwitz Concentration Camp.

I started my immigration procedures a few years ago through my brother, Henry Tichauer, who is a citizen of the United States. In the course of the interview with the Consular officer I voluntarily disclosed, as an act of good faith, about my homosexual conviction forty years ago. This was an isolated incident for which I paid my dues. Also, please note that had I committed the same act in England nowadays, I would not have been convicted, as the act is no longer considered a crime. Furthermore, the High Court of London informed me of the existence of an English statute, The Rehabilitation of Offenders Act, 1974. Said statute provides that a convicted person who, after conviction is not convicted of a further serious offense, that person is entitled to be treated as if he had not been prosecuted for, or convicted of, the offense for which he was convicted.

Now I am 75 years old and after living such an unfortunate life filled with sadness and turmoil, I would like to spend my remaining days with my only living relative, my brother, Henry Tichauer.

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I understand I must waive my rights under the Freedom of Information Act and the Privacy Act and I do so willingly. I have done everything I can to immigrate through all means provided by law and have exhausted all administrative remedies.

Thank you in advance for your attention to my case.

Sincerely yours,

HERBERT TICHAUER.

BERLIN, *November 7, 1983.*

Mrs. MAGDA MONTIEL DAVIS,
Biscayne Tower,
Miami, FL.

DEAR MRS. DAVIS: Many thanks for your letter dated Okt. the 13th. I can only state the following because I no longer have the expired passports showing the entry dates into the U.S.

I entered the U.S. for the first time in 1959 and then two or three more times. After that I had visas issued to me by the U.S. Consulat General in Berlin who also issued the first three or two visas. Then I got visas on July 1970—8/27/1971—6/13/1972—7/26/1974—3/27/1977—10/15/1980—10/13/1981 and 11/16/1982. All departures were within two to four months after my arrivals. The Types of visas were B–2. They were visitors visas.

I have not been employed since 1943 but have been self-employed since that time as a real estate broker and Gastronom and have retired for the past five years.

I do hope that this answer will be sufficient. That is the best I can give.

With best wishes I remain yours very gratefully.

HERBERT TICHAUER.

CONSULATE GENERAL OF THE
UNITED STATES OF AMERICA,
Berlin, Germany, June 3, 1983.

Hon. LAWRENCE J. SMITH,
Member of Congress,
Hollywood, FL.

DEAR MR. SMITH: This is in further reply to your letter of 7 April 1983 concerning the visa case of Herbert Tichauer, brother of your constituent Henry Tichauer.

As you requested, I have carefully reviewed Mr. Tichauer's case. I must regretfully state that I can find no grounds on which the original finding of ineligibility for a visa under Section 212(a)(9) of the Immigration and Nationality Act might be reversed. As you know, we must follow the terms of the Act in making decisions as to eligibility or ineligibility under Section 212(a)(9), and are unable to take into account circumstances of a humanitarian nature such as those that exist in Mr. Tichauer's case.

Section 212(h) of the Immigration and Nationality allows the Attorney General to waive Section 212(a)(9) ineligibility in the case of an intending immigrant who is the child, parent, or spouse of an American citizen or legal permanent resident, but there is no simi-

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lar provision for brothers. I therefore see no hope for Mr. Tichauer's being able to emigrate to the United States, but assume that he will be able to continue to spend long periods there as a temporary visitor.

I regret that this reply cannot be more favorable.

Sincerely yours,

ROBERT O. BLUCKER, *Consul General.*

BUDGETARY INFORMATION

This legislation does not provide new budget authority and no estimate or comparison has been received from the Director of the Congressional Budget Office.

OVERSIGHT STATEMENT

The Committee exercises general oversight jurisdiction with respect to all immigration and nationality matters but no specific oversight is contemplated in this instance.

COMMITTEE RECOMMENDATION

Upon consideration of all the facts in this case, the Committee is of the opinion that H.R. 1756, as amended, should be enacted and accordingly recommends that the bill do pass.

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